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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,372	01/18/2005	Christopher Paul Darby	ENL-346-A	1322
48980	7590	11/30/2005	EXAMINER	
YOUNG & BASILE, P.C. 3001 WEST BIG BEAVER ROAD SUITE 624 TROY, MI 48084			VASUDEVA, AJAY	
			ART UNIT	PAPER NUMBER
			3617	

DATE MAILED: 11/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/522,372

Applicant(s)

DARBY ET AL.

Examiner

Ajay Vasudeva

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 and 10-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,6,7 and 10-12 is/are rejected.
- 7) ☒ Claim(s) 4,5 and 8 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 January 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Preliminary Amendment***

1. A preliminary amendment was received on 1/18/2005, which replaces the prior version of the claims.

### ***Specification***

2. Appropriate section headings are missing in the Specification. The following section headings may be provided in the specification:

- a. Title of the Invention.
- b. Background of the Invention.
  - Field of the Invention.
  - Description of the Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- c. Brief Summary of the Invention.
- d. Brief Description of the Several Views of the Drawing(s).
- e. Detailed Description of the Invention.

Appropriate section headings, as above, are recommended.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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4. Claim 10-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- In claim 10 (line 3), the limitation "the or each trim tab" lacks proper antecedent basis in the claim.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 10 is rejected under 35 U.S.C. 102(b) as being anticipated by Wittmaier (US 5,474,013 A)

Wittmaier discloses a method for controlling a trim tab system, including the steps of automatically detecting a mode change event of shifting into a reverse gear, and on detection of the mode change event automatically moving the trim tab either into the retracted position or into any one of a range of operational positions.

In the claim, the limitation "for an amphibious vehicle" (emphasis provided) is merely an intended use limitation, and therefore, has not been accorded any patentable weight.

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7. Claim 1-3, 6, 7 and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Morash (US 4,843,991 A).

Morash shows an amphibious vehicle having a trim tab [3] attached to the vehicle body. The limitation "trim tab" is any such component that is capable of adjusting the inclination of the vehicle relative to its horizontal axis -- whether longitudinally or transversely. In the present case, the presence of the trim tab would affect the inclination of the amphibious vehicle when it is in a marine mode.

A control system includes a detecting means [4], wherein any movement of the detecting means correspondingly senses -- or detects -- a mode transition into a marine mode from a terrestrial mode, or vice versa. As a result of such sensing, a tab actuation means [V] automatically moves the trim tab relative to the vehicle body.

Applicants is reminded that the phrases "detecting means for detecting at least one mode change event and tab actuation means for moving the or each trim tab relative to the vehicle body" (emphasis provided) are merely intended use limitations, and are not considered positive recitations.

Similarly, the phrase "the control system being adapted to automatically move" is also considered an intended use limitation. In the present case, if a structure is capable of automatically moving the tab, then it meets the requirement of the claim.

Re claim 6, the control system is capable of providing a visual signal to an operator about the mode event.

Re claims 10-12, the recited steps are inherent in the operation of the vehicle.

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***Allowable Subject Matter***

8. Claim 4, 5 and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

9. The prior art made of record in the attached PTO Form 892, but not yet relied upon, is considered pertinent to applicant's disclosure.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ajay Vasudeva whose telephone number is (571) 272-6689. The examiner can normally be reached on Monday-Friday 12:00 -- 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joe Morano can be reached on (571) 272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ajay Vasudeva  
Examiner  
Art Unit 3617

**AJAY VASUDEVA**  
**PATENT EXAMINER**

11/28/05